



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

the money of a third person, and without any agreement that the security shall be assigned or kept on foot for the benefit of such third person, is absolutely extinguished:" see *In re Schaller*, 10 Daly (N. Y.) 57; *Clark v. Moore*, 76 Va. 262.

In *Childress v. Allen*, 3 La. R. 477, it is held that the purchaser of land seized and exposed to sale on an execution issued upon a judgment by which the debt is discharged, is not entitled to be subrogated to the rights of the judgment creditor. Such an act, said the court, cannot be distinguished from payment made to the creditors without a sale of the debtor's property, by a person not having an interest to discharge the debt. Subrogation does not arise in favor of a purchaser on a forced sale.

In the recent case of *Nash v. Taylor*, 83 Ind. 347, 351, an assessment was levied upon certain land for street improvements in favor of the contractor, who did the work on the street. The owner of the land borrowed the money from Nash with which to discharge the

lien, which attached to his land by virtue of the levy. The money was used for this purpose; Nash sought to be subrogated to the rights of the contractor, which was denied. The court remarked, "Here there is nothing more than the loan of money by one neither in privity of blood nor of contract or estate, with the person who claims the lien which is sought to be displaced by the lender. There was no colorable obligation on the part of Nash to pay the street assessment, nor did he do so; neither did he intend to pay it. The case is, therefore, easily discriminated from one in which a party discharges a lien under a colorable obligation, or pays it, expecting to derive some benefit from it." See further, *Railroad v. Facney*, 78 Ill. 116; *Kelly v. Receiver of Green Bay, &c., Rd.*, 10 Biss. C. C. R. 151; *Duncan et al. v. Railroad*, 2 Wood C. C. 542; *Blair v. St. Louis H. & K. Rd.*, 23 Fed. Rep. 521; *Binford v. Adams*, 3 N. E. Rep. (S. C. Ind.) 753.

B. E. BLACK.

San Francisco, Cal.

Court of Errors and Appeals of Maryland.

PROVIDENCE WASHINGTON INS. CO. v. ADLER.

In marine insurance, if an article is injured by reason of its own inherent tendencies; as, for example, by spontaneous combustion, and these tendencies are not called into activity by any perils insured against, the insurer is not liable.

Whether the same rule applies in an ordinary contract of fire insurance, *quære*.

APPEAL from Superior Court, Baltimore city.

John R. Kenly, for appellant.

F. P. Clark, for appellee.

The opinion of the court was delivered by

STONE, J.—The plaintiffs shipped, by a line of steamers running from New York to the south, a quantity of oil-cloth clothing to Louisiana and Texas. They insured this clothing, before shipment, in the office of the defendant company. The clothing was packed in boxes, and on its arrival at its destination it was found injured and comparatively worthless, either by spontaneous combustion, or

by some chemical action arising from the materials in the goods themselves. They all presented the appearance of having been burned or charred within the boxes. The clothing was not injured by any external force or accident, but whatever the injury was it was the result of the inherent infirmity of the goods themselves. Neither the plaintiffs nor defendants knew, at the time the insurance was effected, that the goods were liable to spontaneous combustion, or to be injured by any inherent defect in the goods. No extra premium to cover such risk was paid. Under these circumstances the defendants claim that, by the general principles of insurance law, they are not liable for a loss by spontaneous combustion caused by the inherent infirmity of the goods themselves.

This was a marine policy, and one of the dangers insured against, by the terms of the policy, was fire. But while this is undoubtedly so, the question remains, and is still undecided in this state, whether the term "fire," used in ordinary marine policy, will, upon general principles, cover the case of spontaneous combustion caused by an inherent infirmity in the article insured, and not the result of accident or peril of the sea. There is no doubt of the liability of the defendant company, under its policy, had the ship taken fire, and the goods have been consumed, or had the fire originated from any of the perils insured against; but the question is a very different one when, as in this case, the goods are in good faith insured, and believed both by plaintiffs and defendant not to be liable to spontaneous combustion by reason of their inherent infirmity, but which in fact were so liable, and were so injured. The authorities are few upon this subject, and neither full nor satisfactory. One of the oldest to which we have access is Emerigon, who says (page 290): "Article 12 of another title establishes, as a general rule, that everything which happens through the *inherent vice of the thing*, or by the act of the owners, master, or merchant shipper, shall not be reputed a peril, if not otherwise borne on the policy. It is, then, certain that the insurers never answer for damages and losses which happen directly through the act or fault of the assured himself. It would be in fact intolerable that the assured should be indemnified by others for a loss of which he is the author. This rule is grounded on first principles. It is a general rule, from which it is not permitted to derogate by a contrary agreement. As Pothier remarks, it is evident that I cannot validly agree with any one that he shall charge himself with the faults that I shall commit."

We do not understand this learned author to mean that an article may not be insured that is inherently liable to spontaneous combustion or decay, *provided it is so expressed in the policy*, but not otherwise. But if the loss happens through *the fault of the assured*, then the insurers are not liable, whatever may be the terms of the policy. For example, if an article is insured which, *when dry*, is not liable to spontaneous combustion, but when he puts it on board *it is wet*, in such case no recovery can be had. Such we understand to be the views of this author.

The next case to which we are referred, is the case of *Boyd v. Dubois*, 3 Camp. 133. In that case Lord ELLENBOROUGH said: "If the hemp was put on board in a state liable to effervesce, and it did effervesce, and generate the fire which consumed it, upon the common principles of insurance law the assured cannot recover for a loss which he himself has occasioned."

The defendant in that case attempted to prove that the hemp, which was insured, was put aboard ship in a *damaged* condition, and for that reason was apt to ferment and take fire. This case is in accord with Emerigon.

The next authority, Parsons, in his work on Contracts (vol. 2, p. 374, sect. 6), says: "It is another rule that insurers are not liable for property destroyed by the effect of its own *inherent deficiencies or tendencies*, unless these tendencies are made active and destructive by a peril insured against. Thus, if hemp which was dry when laden be afterwards wet by a peril of the sea, and by reason of such wet ferments or rots or burns, the insurers would be liable."

And that very learned author refers to both Emerigon and the case of *Boyd v. Dubois* as his authorities.

Chancellor KENT also takes a similar view in his Commentaries. 3 Kent, chap. 48. Phillips on Insurance (chap. 13, marginal page) says: "It is a general rule that insurers are not, under the common form of the policy, liable to any damage or loss arising from the qualities or defects of the subject insured, since these are not among the perils assumed by the underwriters."

Parsons on the Law of Marine Insurance (vol. 2, p. 216), holds the same view. He says: "It is also a rule that the insurers are liable for no subject-matter of insurance which is destroyed by reason of its own inherent defects or tendencies. But this rule does not apply to tendencies which are called into activity only by a peril

insured against. Thus, if hemp insured burns up or rots from spontaneous ignition or fermentation, it being known that this may happen if the hemp be damp, but not if it be dry, the question would be whether it was damp or dry when it was put on board. But if the hemp were dry when laden, and was afterwards wet by reason of the straining of the ship in a storm, or by the shipping of a sea, or any like peril, then the insurers, whether on ship or cargo, would be liable."

All these authorities refer to Emerigon and the case in 3 Camp., and are all upon marine insurance.

On the other hand, we have been referred to the case of *British Amer. Ins. Co. v. Joseph*, 9 L. C. 448 (decided in the Court of Appeals for Lower Canada), which has been supposed to decide that a fire insurance (not marine) covers the risk of spontaneous combustion; and, citing that case only, Mr. May, in his work on Fire Insurance, comes to the same conclusion. The Lower Canada case is certainly very imperfectly reported. The report is in French, and the court gave no opinion. The terms of the policy are not set out, and but a very few of the facts in the case. It is by no means clear, from the few facts that are stated, that the spontaneous combustion did not originate in a heap of *uninsured* coal, and extend from that to the insured coal. But suppose the case has all the effect claimed for it by the appellee, and does decide that in a purely fire insurance, the risk of spontaneous combustion is covered, we could not agree that it should overrule the long list of high authorities to the contrary in marine policies; more especially since the reasons to the contrary, we think, are satisfactory. No well-managed insurance company would take a marine risk on an article inherently liable to spontaneous combustion; nor would any prudent shipmaster or owner receive such on his vessel, as not merely the property so insured, but the property of others, and the safety of the ship, and the lives of the crew, would be endangered by so doing. It would, as Emerigon says, be intolerable that the owner should receive pay for goods that destroyed themselves. The object of a marine policy is to insure against the perils of the sea, and not against the perils incident to the goods themselves.

In this case it is very clear that the goods were injured by their own inherent infirmity, and that such inherent infirmity was not called into activity by any peril insured against. We think such loss was not within the contemplation of either party to the con-

tract of insurance; that the term "fire," used in the policy, included fire from accident, or brought about by a peril of the sea, and not spontaneous combustion. Entertaining these views, we think the court below were in error in granting the fourth prayer of the plaintiff, and in refusing the first prayer of the defendant, and the judgment must be reversed. But, inasmuch as the evidence is full and explicit that the injury was caused by the inherent infirmity of the goods, a new trial will not be awarded.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.¹

COURT OF ERRORS AND APPEALS OF MARYLAND.²

SUPREME COURT OF NEW HAMPSHIRE.³

SUPREME COURT OF NORTH CAROLINA.⁴

SUPREME COURT OF OHIO.⁵

ASSIGNMENT.

Power to make—Surviving Partner of Insolvent Firm—Effect of Fraudulent Omission from Schedule.—In the absence of any statute forbidding it, a sole surviving partner of an insolvent firm, who is himself insolvent, can make a valid assignment of partnership assets for the benefit of the joint creditors, with preference to some of them; and the fact that such surviving partner fraudulently omitted from the assignment schedule certain property which constituted a part of the partnership assets and appropriated the same to his own use, while the assignment purported to be of all the firm assets, does not affect the rights of the assignee and of the beneficiaries of the trust, they being ignorant of the fraud of the grantor: *Emerson v. Senter*, S. C. U. S., Oct. Term 1885.

COMMON CARRIER. See *Damages*.

CONFLICT OF LAWS

Contract—Usury.—If no place is agreed on for the performance of a contract, the *lex loci contractus* governs. If the place of performance is agreed on, the *lex loci solutionis* governs: *Morris v. Hockaday*, 94 N. C.

Where a bond was dated in North Carolina, but had no specified place of payment, it was held that it was governed by the usury laws of that state, and it is immaterial that the pleadings admit that the bond was delivered in Virginia: *Id.*

¹ Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term, 1885. The cases will probably appear in 118 U. S. Rep.

² From J. Shaaf Stockett, Esq., Reporter; to appear in 64 Md. Rep.

³ From Hon. W. S. Ladd, Reporter; to appear in 61 N. H. Rep.

⁴ From Hon. Theo. T. Davidson, Reporter; to appear in 94 N. C. Rep.

⁵ From George B. Okey, Esq., Reporter; to appear in 44 Ohio St. Rep.